

Town of Amherst
Zoning Board of Appeals
SPECIAL PERMIT

2015 JUL -1 PM 3: 22
AMHERST TOWN CLERK

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2015-00030, to modify conditions of ZBA FY2011-00016 and ZBA FY2012-00024 to construct a new enclosed entry; to remove a limit on parking behind the building; to erect an eight foot fence; and for food truck operations at 481-485 West Street (Map 19D, Parcel 19, B-VC Zoning District), subject to the following conditions:

1. The new entrance enclosure shall be constructed substantially in accordance with the plans and elevations prepared by Kuhn Riddle Architects dated April 3, 2015, and stamped approved by the Zoning Board of Appeals on June 4, 2015.
 - a. There shall be no food or beverages served or consumed in the entrance enclosure.
2. The eight foot fence shall be installed substantially in accordance with the site plan prepared by Kuhn Riddle Architects annotated and approved by the Zoning Board of Appeals on June 4, 2015 and within 30 days of the filing of this permit with the Town Clerk and the following:
 - a. An erosion control silt fence shall be installed as shown on the approved site plan prior to construction.
 - b. Installed by a licensed contractor.
 - c. Constructed with the materials as shown on the submitted Lowes "detail" and thereafter maintained in good repair.
 - d. Constructed with the finished side facing out towards the adjacent property.
 - e. All activity associated with the fence installation shall occur from the paved area behind the building.
3. The site improvements shall be installed and completed substantially in accordance with the site plan prepared by Kuhn Riddle Architect, annotated and approved by the Zoning Board of Appeals on June 4, 2015 and within 30 days of the filing of this permit with the Town Clerk. In addition:
 - a. "No Parking Signs" shall be installed every eight feet along the south, east, and north perimeter of the customer parking area. Said signs shall be set back 1 foot from the edge of curbing or pavement, installed so that the sign is 3 feet in height; and properly secured into the ground; and shall be maintained in good condition. The purpose of this condition is to prevent cars from parking on the lawn area and/or around the perimeter of the paved area.
 - b. 6 x 6 pressure treated landscape timbers shall be installed on the south edge of the parking area and along the east side of the employee parking area as shown on the approved site plan. Said timbers shall extend to the property line and shall be anchored securely into the ground and be maintained in good condition.

- c. Areas adjacent to the parking areas impacted by vehicle parking along the south, east, and north shall be filled, leveled, loamed and seeded with grass as shown on the approved site plan.
4. There shall be a maximum of eight employee vehicles plus the food truck parked behind the building.
 - a. All vehicles shall be parked on paved surfaces.
5. The food truck shall be operated in accordance with the food truck Management Plan approved on June 4, 2015, including but not limited to:
 - a. The operations associated with truck loading and unloading shall cease by 3:00 a.m.
 - b. In the event two-times-per-week the dumpster pick-up schedule proves to be insufficient to keep the area clean and sanitary, the number of weekly pickups shall be increased.
 - c. Extensive cleaning of the vehicle involving water, such as hosing out of the interior or power washing, is not permitted on the property.
6. Changes to the approved plans or permitted operations shall be submitted to the Zoning Board of Appeals at a public meeting. The purpose of the public meeting shall be for the Board to determine whether the changes are minor or significant enough to require modification of the Special Permit. The addition of any new seating or other capacity shall require modification of the Special Permit.
7. All other relevant conditions of ZBA FY2012 and 2013 Special Permits shall remain in effect.

Eric Beal
Eric Beal, Chair
Amherst Zoning Board of Appeals

July 1, 2015
DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Mission Cantina
Owner: Charles Wang, 90 Halcyon Drive, Bristol, CT 06010

Date application filed with the Town Clerk: March 27, 2015

Nature of request: For a Special Permit to modify conditions of ZBA FY2011-00016 and ZBA FY2012-00024 to construct a new enclosed entry; to remove a limit on parking behind the building; to erect an eight foot fence; and to increase the number of parking spaces on-site

Address: 481-485 West Street (Map 19D, Parcel 19, B-VC Zoning District)

Legal notice: Published on April 1, 2015 and April 8, 2015 in the Daily Hampshire Gazette and sent to abutters on April 1, 2015

Board members: Eric Beal, Tom Ehrgood, Keith Langsdale

Staff members: Jeff Bagg, Senior Planner, Rob Morra, Building Commissioner

Submissions:

- Application form filed with the Town Clerk on March 27, 2015
- Draft Project Summary, dated April 10, 2015
- Proposed Site Plan, prepared by Kuhn Riddle Architects, dated April 3, 2015 and revised on April 9, 2015
- Elevations and Floor Plan prepared by Kuhn Riddle Architects, dated March 12, 2015 and revised on April 3, 2015
- Draft Management Plan and draft food truck Management Plan
- Email dated March 23, 2015 for owner authorization
- ZBA FY2012-00024 & ZBA FY2011-00016

Site visit **April 14, 2015**

Eric Beal and Tom Ehrgood met the restaurant owner, Sam Kochan, and manager, Josh Klein at the site. Mr. Langsdale viewed the site separately. The Board observed the following:

- The approximate location of the proposed three additional customer spaces which were marked out on the site by Town staff
- The approximate location of the proposed food truck and employee spaces which were marked out on the site by Town staff
- The rear of the business where the proposed fence is to be installed and dumpster location

- The front of the business where the proposed enclosure is to be constructed
- The perimeter of the existing parking area where vehicles parking on the grass has created mud, ruts, and vegetated areas
- The location of the additional business, Sibie's Restaurant, which is in the northern portion of the building

Public Hearing: April 16, 2015

The following new information was provided at the public hearing:

- Final Management Plan and food truck Management Plan
- Final Project Summary, dated April 10, 2015
- Site Plan with annotations by the Planning Department
- Letter from Sarah Barr, 30 West Pomeroy Lane

The application was presented by the restaurant manager, Josh Klein. He described the main elements of the project in terms of the project summary:

- Entrance enclosure
 - The original purpose of the modification request was to enclose the existing patio to prevent cold winter airflow into the restaurant and loss of air conditioning in the summer when main entrance door is open.
 - As described in the Management Plan, while the enclosure may act as an overflow waiting area, the manager will be responsible for ensuring no alcoholic beverages leave the main building into the enclosure.
 - The plans prepared by Kuhn Riddle Architects show that the enclosure will include double hung wood windows, wood trim/raised panels to match the existing color scheme and will be handicapped accessible. The south elevations will be sided with T-111 materials and be painted to match.
- Food truck
 - In February 2015, the Select Board approved a license to operate a Mission Cantina food truck in certain locations in Amherst center. The ability to park the truck behind the building is needed in order to load and unload before and after shifts.
 - The back of the restaurant would be used to unload the trash created while in operation and to bring in equipment to be cleaned the next morning.
 - The entire late night unloading process at the restaurant will begin around 2:15 a.m. and will last 20 minutes.
- Removal of limit on parking behind the building
 - The original Special Permit limited the number of cars parked at the rear of the building to four. This was a limit agreed upon by Mission Cantina to avoid a requirement to screen the property for five or more vehicles.
 - The modified site plan shows that it would be parking for up to 10 employee vehicles stacked in two rows of five cars.
- Addition of a food truck and employee parking
 - Two new spaces would be paved adjacent to the north side of the building.
 - The space for the food truck would be 9 feet wide by 22 feet long and the employee space would be 9 feet by 18 feet.
 - Concrete bollards would be installed around the existing propane tanks to protect them from potential vehicle contact.

- Installation of new fence
 - The proposal is to increase the height of the existing dumpster fence from six feet to eight feet to fully screen it.
 - The proposal includes the construction of a new six foot fence the entire length of the rear property line and to increase the height of the existing six foot dumpster fence to eight feet. The fence is proposed in consultation with the abutting property owners.
- Addition of three customer parking spaces
 - The site plan shows three new customer parking spaces along the north side of the existing parking area. The spaces would be paved and striped to match the existing parking and would include a walkway and wheel stops. Due to the wetlands there is no easy way to add additional parking along the south side. The new spaces would result in 30 spaces which requires the creation of one new handicapped spaces.

The Board discussed the proposed fence. As shown on the plan, the six foot fence would be approximately 72 feet in length and would run all the way to the front property line adjacent to West Pomeroy Lane. It was observed that this Special Permit would need to authorize a six foot fence in the first 20 feet of the property, because the Bylaw limits fence height to four feet in the front setback. The Board asked about the type of fence. Mr. Klein responded that it would be a typical stockade fence.

The following members of the public spoke:

- Matt Turcotte & Sarah Barr, 30 West Pomeroy Lane, stated that they own the property abutting the rear of the restaurant. They indicated support for the proposed changes and the fence. They requested that the Board consider allowing the entire fence to be eight feet high instead of six, stating that it would create a better visual and sound barrier.

The Board agreed that the increased fence around the dumpster was appropriate. The Board also agreed that increasing the height of the fence to eight feet along the property line was important to mitigate the potential noise from additional vehicles and activities from the food truck occurring at the rear of the restaurant.

The Board discussed the food truck operations. The Board asked whether additional employees were needed for the truck. Mr. Klein explained that the truck would have two cooks and a driver, but one of two is an existing employee. The food preparation would occur in the kitchen and the truck would be loaded at the rear of the property. The Board asked about the adequacy of the dumpster to handle additional trash created by the truck in addition to the restaurant. Mr. Klein indicated that, if additional trash pickups prove to be necessary, they will increase the pick-ups to more than two times per week. The truck is allowed to operate until 2:00 a.m. under the Select Board permit. Between 2:00 a.m. and 2:45 a.m. the truck would be unloaded at the rear of the restaurant.

The Board discussed the customer parking:

- Mr. Beal stated that both from the site visit and having been a patron at the restaurant that parking in undesignated areas is a problem of restricting maneuverability and blocking cars in. He noted that the Zoning Bylaw requires that parking be on paved surfaces and that continued parking on the lawn will become problematic and could be enforced. Mr. Klein explained that the property owner is not willing to contribute to adding new parking on the property so the owner the restaurant would like to add parking but wasn't sure when this could happen.
- Mr. Beal stated that the proposal requests a lot of new uses and investment into the property and that it will need to be part of this permit that the additional parking be created. Mr. Ehrgood stated that this permit wouldn't just be authorizing the parking, it would be requiring that it get constructed in a timely manner. Mr. Klein stated that for financial reasons he wasn't sure when the parking could be completed. He noted that their priority is the enclosure and the fence.
- The Board stated that parking is a problem and that adding the paved customer parking and the food truck and employee parking should be required as part of the approval of the proposal to expand the uses on the property.

The Board requested that Mr. Klein consult with the restaurant owner on a timeline for completing the creation of the three new customer parking spaces and the food truck and employee parking spaces.

Mr. Beal MOVED to continue the public hearing to April 30, 2015. Mr. Ehrgood SECONDED the motion and the Board VOTED unanimously to continue the hearing.

Public Hearing: April 30, 2015

The following new information was provided at the public hearing:

- Email from Kristi Bodin, Esq., dated April 30, 2015 requesting a continuation to allow more time to review the case.

Mr. Beal MOVED to continue the hearing to May 14, 2015. Mr. Ehrgood SECONDED the motion and the Board VOTED unanimously to continue the hearing.

Public Hearing: May 14, 2015

The following new information was provided at the public hearing:

- Email from Kristi Bodin, Esq., dated May 11, 2015 requesting withdrawal of the application and objecting to the requirement to add additional parking
- A series of 32 photographs submitted by Town staff from May 14, 2015, April 16, 2015, March 19, 2015.

The applicant was represented by attorney Kristi Bodin. The restaurant manager, Josh Klein, was also present. Mr. Bodin stated the following:

- She has not been involved from the beginning, the continuation on May 14th allowed her to speak with her clients and the Planning Department and Inspection Services.

- The primary goal of the project was to construct the enclosure and to install a fence. Because there is no increase in occupancy and there is no evidence to justify the requirement to increase customer parking, the Board is making a decision that would be arbitrary and capricious and would be overturned if appealed.
- The discussion of the need for additional parking is based on anecdotal observations by the Chair person. The intractable position of the Board will hurt a successful business that employees local people. The simple request has turned into a very expensive project and the requirement for additional parking is out of line with what has been requested.

The Board discussed the attorney's letter dated May 11, 2015. Mr. Beal noted that it requests withdrawal of the application while threatening to appeal the decision:

This entire matter started when my clients sought a building permit to allow for a vestibule enclosing the front entrance to their restaurant, and to install a fence behind the building to provide better screening for their residential neighbor. The building commissioner interpreted this as a "change in use" which triggered the need for a Special Permit application. Many weeks and several thousand unrecoverable dollars later, Mission Cantina is faced with an intractable Board and no further likelihood of success unless they acquiesce to the arbitrary, capricious, and unsupported conditions which the Board apparently wishes to impose.

We feel that the Board has exceeded its authority and reach by using anecdotal evidence to demand more than twice the number of parking spaces required for Mission Cantina under the current zoning bylaw. At the time the expansion special permit was granted, Mission was at a capacity of 49 (forty nine) which required 12 (twelve) parking spaces under the zoning by-law. The lot has 26 spaces, more than twice the required number. There has been no request for an increase in capacity, and there is no admissible evidence to support the ZBA's demand for additional parking.

We could, of course, let this application run its course and then appeal the Board's decision to a judge. We are fairly confident that a Court would find the Board's actions to have exceeded its authority. But such an appeal would take many months and many more dollars, time and money which my client would rather put into the future of his business. Once again the Town of Amherst has cemented its reputation as a difficult and undesirable place to do business. It's too bad.

Mr. Bagg explained that while Mission Cantina initially only requested the entrance enclosure, the parking limit behind the building was not being complied with, so the proposal for the fence was added to remove the limit of four and have up to 10 employee cars and the food truck operate behind the building. Additionally, Mission Cantina established a food truck and has been operating it at the site which requires modification of the Special Permit. To withdraw the application would require compliance with the limit of four cars behind the building and would require ceasing all operations and parking of the food truck at the site.

The Board discussed the food truck operations. Ms. Bodin argued that the parking and loading of the food truck should not require modification of the Special Permit. Mr. Klein stated that they were granted the Select Board license.

Mr. Bagg explained that the Select Board approval regulates where and when the food truck can serve food in the Town right of way and on the street. The Special Permit must be modified to allow the increase in activity on the property including parking the truck on the property; increasing the number of employees who park at the restaurant to drive and operate the truck; for using the kitchen to prepare food and to load it onto the truck; and, for returning back to the restaurant and unloading all the trash collected while serving food and emptying the truck. Those increased activities that were not included in the original Special Permit or outlined in the approved Management Plan. Ms. Bodin argued that other food trucks have not been required to get Special Permits. Mr. Beal noted that this is the only food truck that operating out of and is connected to an existing restaurant in town. He also explained that even parking the food truck without all the other operations would require a Special Permit under Section 5.0152 of the Zoning Bylaw. Mr. Beal sought input from the Building Commissioner (who was not present) as to whether the food truck would be a second principal use or an accessory use to the restaurant.

The Board discussed the proposed parking spaces:

- Mr. Klein stated that they were urged by Town staff to add parking on the plan. He explained that they cannot afford to add the parking now and the owner of the property is not willing to pay. He said that because the Board would want the parking constructed right away, they would like to remove it from the plan. Ms. Bodin stated that she did not believe the Board had the authority to require additional parking because the previous permits found the parking adequate and there is not increase in occupancy. Mr. Bagg stated that, because the Special Permit is being modified to change the parking requirements for employees and because the enclosure will allow additional patrons to wait for service; thus increasing the number of people who will be at the property, the Board has the ability to require additional parking. Mr. Bagg introduced a set of 32 photographs from March, April and May showing the excessive parking on the property and parking on unpaved surfaces by customers. The photographs also show more than four employee vehicles parked at the rear of the property and the consistent parking of the food truck on unpaved surfaces.
- Mr. Beal explained he would like to find a way to approve the application, but he stated that, based on the photographs, it appears that the limits on parking at the rear of the building and the requirement that all vehicles be parked on paved surfaces have not been enforced while the applicant sought this permit. Without adding additional customer or staff parking, it should be expected that the parking regulations should now be enforced. He asked whether the applicant had considered leasing spaces or hiring a parking attendant if that would be a more cost effective method. Ms. Bodin stated that they were unable to come to a agreement with Richard Slobody, the owner of 479 West Street to the north, so leasing shared parking spaces is not an option due to the permitting requirements involved. She asked why Mission Cantina was being singled out when there are other parking issues at places such as the Harp or The Hanger. Mr. Beal responded that Mission Cantina is not being singled out; it being rather that those restaurants are not requesting modifications to their Special Permits.

- Mr. Beal stated that a condition of the permit will be to require all parking to occur on paved surfaces and expressed concern with the congestion in the parking lot for emergency vehicle access created by the haphazard parking. He requested that the applicant come back with some type of proposal to prevent customer vehicles from parking on the lawn and how the employee parking will be handled and gave boulders, wooden barriers, landscape plantings, and/or signs as possible methods.

The Board discussed the proposed fence. Mr. Ehrgood stated that because of the increased activities behind the building, including additional employee cars, additional activity for the food truck and the potential for it to create more noise, he would not approve a stockade fence.. He stated that a stockade fence has openings between each picket and is thus an ineffective screening fence for the level of noise and light he understands will be generated by the use. He stated that the Board must consider not just the current abutting residents, but also future residents.

Mr. Langsdale stated that he believed the extra spaces were important and asked how many employees are in the restaurant during a shift. Mr. Klein stated that there are typically 9 to 10 employees who are on a shift.

Citing the numerous changes to the proposal, the Board requested that the applicant come back with a final site plan, final plan to prevent cars from parking on the lawn, and a final fence plan.

Mr. Beal MOVED to continue the hearing to June 4, 2015. Mr. Ehrgood SECONDED the motion and the Board VOTED unanimously to continue the hearing.

Public Hearing: June 4, 2015

The following new information was provided at the public hearing:

- Revised site plan showing no new parking spaces, proposed fence and enclosure
- Updated food truck Management Plan
- Lowes information sheet about revised fence
- Options for no parking signs
- Revised Project Summary
- A series of 10 photographs of employee and customer parking on the lawn, taken June 4, 2015, prior to the hearing by Town staff

The applicant was represented by attorney Kristi Bodin. The restaurant manager, Josh Klein, was also present.

The Board discussed the revised fence plan. Ms. Bodin indicated that it will be a pine dog-ear pressure-treated privacy fence as shown on the Lowes information sheet. She stated that it was 2 or 3 times as expensive as a typical stockade fence, but it would provide better privacy and noise protection. She indicated that it would be installed by a licensed contractor and would be left unfinished. Mr. Ehrgood noted that at the previous hearing the abutter was involved in the fence plan and asked what that involvement was. Mr. Klein stated that they are supportive of the fence and had requested that it be eight feet instead of six feet. He explained that the plan was that they were going to share the cost with Mission Cantina. Mr. Ehrgood stated that the obligation is to install the fence lies entirely with the applicant.

The Board determined that:

- The fence must be installed within 30 days of the filing of the decision with the Town Clerk because the area will be used for parking and the food truck prior to the construction of the enclosure.
- The fence must be installed by a licensed contractor and requires a building permit.
- The fence must be installed with the finished side facing out and must be maintained in good condition.

The Board discussed the site plan and the final proposal for employee parking. Mr. Klein stated that he had taken measurements and concluded that, with the fence, eight employee cars plus the food truck can park on the existing paved surfaces behind the building.

The Board agreed that cars can be stacked and that delineation of the spaces is not necessary; it will be up to the restaurant to manage parking in the area. Mr. Ehrgood stated his belief that a physical barrier of some sort, such as boulders or a bollard, is necessary to ensure cars don't continue to park on the lawn. The Board determined that:

- The east side of the parking area shall be delineated with a 6 x 6 wood timber placed immediately adjacent to the existing curb.
- The area behind the timber should be filled with loam and re-seeded with grass
- The timber shall extend from the building to the property line.

The Board discussed the site plan and the final proposal for the customer parking out front. Mr. Klein stated that the applicant is proposing to install signs stating "no parking on the grass," spaced 6-8 feet apart along the south side and along the east side of the parking area along West Street and around the arch adjacent to West Pomeroy Lane. The signs would be installed about two feet from the edge of the curb and/or pavement. Mr. Beal identified that cars have also been observed in the two small grass areas within the parking area and requested signs be installed there as well.

The Board discussed the parking along the south side of the parking area. Mr. Beal re-stated his concern that this area has no curb, and he stated that 6x6 timbers should be added along with the signs. Mr. Ehrgood stated that a curb may not be enough and something like boulders should be required. Mr. Langsdale noted that adding landscape plantings was discussed last time; something that was full enough close to the curb would create a more effective barrier than signs. Mr. Klein stated that the area along the south of the parking area is where snow is stored, and vegetation would prevent that or it would get ruined. The Board determined that:

- 6x6 timbers exposed above the surface to prevent and deter cars from traversing over them shall be installed from the edge of the handicapped space to the property line.
- The disturbed areas beyond the timber must be filled with loam and seeded with grass.

The Board discussed the parking area along the east side of the parking and along the arch adjacent to West Pomeroy. Mr. Morra stated that the photographs show cars straddling the cape-cod curb and/or off the pavement by several feet. A sign 2-3 feet in on the grass will not prevent cars from straddling the pavement and squeezing in to park and the sign shouldn't go right off the pavement as they would get ruined in the winter by plowing. He stated that once they are prevented from parking on the lawn there is not enough room for vehicles to park around the perimeter. Mr. Morra asked Mr. Klein what would happen to the 10 cars that regularly park in those locations. Ms. Bodin stated that the previous permit found the parking to be adequate.

Mr. Morra sought clarification on the goal and whether it was to prevent cars from parking on the grass or whether it was to prevent cars from parking along the perimeter within the paved areas. The Board determined that:

- The signs and conditions are intended to prevent cars from parking over the curb and to prevent them from parking on the paved surface where it creates maneuverability issues and could block passage through the area by emergency vehicles.
- The signs shall be placed 1 foot from the curb area and that the signs should say "no parking" to ensure cars do not park on the paved area in the perimeter or straddle the curb.
- The signs and curbing shall be installed 30 days from the filing of the permit with the Town Clerk.

The Board made the following findings under Section 5.00 of the Zoning Bylaw:

5.00 - Any use which is, in Hampshire County, customarily accessory and incidental to a permitted Principal Use shall be permitted on the same lot with said Principal Use, or on a lot adjacent thereto in the same ownership, subject to the general limitation that it shall not be detrimental to the neighborhood or the property in the vicinity, and subject further to the following provision: Wherever a Principal Use is allowed by Special Permit from the Board of Appeals then Accessory Uses to the Principal Use shall be subject to a Special Permit, unless otherwise provided in this Article. The proposal to operate and store a food truck at the premises is an accessory use to a Class II Restaurant. The Board found that because the principal use requires a Special Permit the accessory use of the food truck is incorporated into this Special Permit.

The Board made the following findings under Section 6.29 of the Zoning Bylaw:

6.29 - Under the provisions of Section 10.38 or 11.24, as applicable, fence, wall, and planting requirements as found in Sections 6.23 through 6.28 may for compelling reasons of safety, aesthetics, or site design be modified by the Permit Granting Board or Special Permit Granting Authority with jurisdiction over the proposed or existing Principal or accessory use(s) for which the fence serves as an accessory structure. The Board found that allowing an eight foot fence adjacent to the property line (where Section 6.24 limits the height to six feet in a side or rear yard) and allowing the eight foot fence to extend all the way to the front property line (where Section 6.24 limits the height to four feet within the front setback) is allowed for the following compelling reasons:

- The increased height from six feet to eight feet will create a better visual and noise buffer between the residential property and the rear of the business activity.
- The extension of the fence to the front property line will screen the uses which will occur in those locations.
- The site design is constrained and the fence is necessary to mitigate potential impacts and will enhance the aesthetics by eliminating the view of the business activity from the residential property.

The Board waived the following requirements of Article 7 of the Zoning Bylaw as authorized under Section 7.29 which requires that there is a compelling reason of safety, aesthetics or site design:

7.103 - *Set back from buildings: except for parking within an enclosed structure, no parking space shall be located within eight feet of a building wall. No access aisle, entrance or exit driveway shall be located within five feet of a building. Loading docks are exempt from this requirement.* The Board found that the site design includes paved surfaces up to the edge of the building and is suitable for parking and therefore waives this requirement. The area behind the building has been used for parking and based on the use solely by employees, the Board found that allowing cars to park within eight feet of the building can be accommodated.

7.104 - *In all parking areas of five (5) or more parking spaces, individual spaces shall be painted, marked or otherwise delineated in a manner sufficient to visibly identify said spaces.* The Board found that marking of the spaces behind the building solely for employees was not necessary and therefore waives this requirement. The area behind the building can accommodate two rows of cars stacked so long as the parking is managed. The limited amount of space behind the building dictates the actual number and arrangement of cars behind the building.

7.6 - *Parking spaces shall be provided for the physically handicapped according to the following table: 21-30 spaces; 2 handicapped spaces.* The Board found that the additional employee parking spaces behind the building should not trigger the requirement to add an additional handicapped space and therefore waives this requirement. The Board also found that while this is a requirement of the Zoning Bylaw, it is not a requirement under the State Architectural Access Advisory Board (AAB).

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.382, 10.383 & 10.385 - *The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians; The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.* The proposal expands the existing restaurant use to include food truck operations and a new entry enclosure. The new eight foot fence will mitigate potential impacts related to noise, lights, and visually offensive structures. Conditions related to parking will reduce impact from vehicular traffic on unpaved surfaces.

10.386 & 10.387 - *The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw; The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements.* The proposal includes waivers under Article 7, as identified herein, and the conditions related to parking will ensure that vehicular access around the perimeter of the property are clear for customer and emergency vehicles.

10.385 - The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto. The Board finds the changes to the site plan, elevations, and landscaping ensure that the completion of the project will be in harmony with the surrounding properties. The proposed enclosure will be constructed with materials that are compatible with the existing building and will be painted to match the existing building.

10.396 - The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features. The proposal involves the construction of an eight foot fence to provide better screening of the existing dumpster and associated business activity behind the building and adjacent to a residence in a residence district.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan. The proposal allows the expansion of a Class II restaurant located in the B-VC Zoning District which purpose is to "provide areas within the village centers of Amherst that allow for a mix of uses, including retail, commercial, office, and housing of moderate to high density". The proposal is in harmony with the goal of the Master Plan to "support sustainable growth of existing businesses..."

Zoning Board Decision

Mr. Langsdale MOVED to approve the application with conditions. Mr. Beal seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, to modify conditions of ZBA FY2011-00016 and ZBA FY2012-00024 to construct a new enclosed entry; to remove a limit on parking behind the building; to erect an eight foot fence; and for limited food truck operations, at 481-485 West Street (Map 19D, Parcel 19, B-VC Zoning District), subject to conditions.

Eric Beal (13) Tom Ehrgood (13) Keith Langsdale (13)
ERIC BEAL TOM EHRCOOD KEITH LANGSDALE

FILED THIS 15th day of July, 2015 at 3:22 pm,
in the office of the Amherst Town Clerk Susan Audette, Asst.
TWENTY-DAY APPEAL period expires, July 21, 2015.
NOTICE OF DECISION mailed this 2nd day of July, 2015
to the attached list of addresses by Tiffany R. Byg, for the Board.
CERTIFICATE OF NO APPEAL issued this _____ day of _____, 2015.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2015,
in the Hampshire County Registry of Deeds.

THE COMMONWEALTH OF MASSACHUSETTS
AMHERST

City or Town
NOTICE OF SPECIAL PERMIT
Special Permit
(General Laws Chapter 40A)

Notice is hereby given that a Special Permit has been granted

To Mission Cantina
Address 481-485 West Street
City or Town Amherst, MA 01002

Identify Land Affected: 481-485 West Street
(Map 19D, Parcel 19, B-VC Zoning District)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner
with respect to the use of the premises on

481-485 West Street Amherst
Street City or Town

The record of title standing in the name of
Wang, Chih Chun & Yu Mei
Name of Owner

Whose address is 90 Halcyon Drive Bristol CT 06010
Street City or Town State Zip Code

By a deed duly recorded in the
Hampshire County Registry of Deeds: Book 3139 Page 136
or

Hampshire Registry District of the Land Court, Certificate No. _____
Book _____, Page _____

The decision of said Board is on file, with the papers, in ZBA FY2015-00030
In the office of the Town Clerk Sandra J. Burgess

Certified this _____ day of _____

Board of Appeals:

Eric Beal Chairman
(Board of Appeals) As
Tom Ehrig Clerk
(Board of Appeals)

_____ at _____ o'clock and _____ minutes _____ m.
Received and entered with the Register of Deeds in the County of Hampshire
Book _____ Page _____

ATTEST _____
Register of Deeds
Notice to be recorded by Land Owner

BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED

Petition of Mission Cantina

For a Special Permit to modify conditions of ZBA FY2011-00016 and ZBA FY2012-00024 to construct a new enclosed entry; to remove a limit on parking behind the building; to erect an eight foot fence; and to increase the number of parking spaces on-site.

On the premises of 481-485 West Street
At or on Map 19D, Parcel 19, B-VC Zoning District

NOTICE of hearing as follows mailed (date) April 1, 2015
to attached list of addresses and published in the Daily Hampshire Gazette
dated April 1, 2015 and April 8, 2015

Hearing date and place April 16, 2015 & April 30, 2015 & May 14, 2015 & June 4, 2015 (Town Hall)

<p style="text-align:center">LEGAL NOTICE</p> <p>The Amherst Zoning Board of Appeals will meet on Thursday, April 16, 2015, at 6:30 P.M. in the Town Room, Town Hall, to conduct the following business:</p> <p>PUBLIC HEARING:</p> <p>ZBA FY2015-00028 - Presidential Development Company - For a Special Permit to amend ZBA FY2013-00014, ZBA FY2008-00008, and ZBA FY1963-16 to construct a new maintenance and laundry facility building, under Section 9.22 and 10.33 of the Zoning Bylaw, at 950 North Pleasant, (Map 8A, Parcel 1, R-N Zoning District)</p> <p>ZBA FY2015-00029 - Co-Ed Realty, LLC - For a Special Permit to re-issue and/or renew ZBA FY2009-00004 for the use of as a non-owner occupied duplex, with modifications to conditions, and to modify conditions of ZBA FY2014-00027, under Section 3.3211 and 10.33 of the Zoning Bylaw, at 382 North Pleasant Street (Map 11C-118, R-G Zoning District)</p> <p>ZBA FY2015-00030 - Mission Cantina - For a Special Permit to modify conditions of ZBA FY2011-00016 and ZBA FY2012-00024 to construct a new enclosed entry; to remove a limit on parking behind the building; to erect an eight foot fence; and to increase the number of parking spaces on-site, at 481-485 West Street (Map 19D, Parcel 19, B-VC Zoning District)</p> <p>ERIC BEAL, CHAIR AMHERST ZONING BOARD OF APPEALS</p> <p>3/23/17 April 4, 8</p>

SITTING BOARD and VOTE TAKEN:

To grant a Special Permit, to modify conditions of ZBA FY2011-00016 and ZBA FY2012-00024 to construct a new enclosed entry; to remove a limit on parking behind the building; to erect an eight foot fence; and for limited food truck operations, at 481-485 West Street (Map 19D, Parcel 19, B-VC Zoning District), subject to conditions.

Tom Ehrigood

Mark Parent - Yes

Eric Beal - Yes

Keith Langsdale - Yes

DECISION: APPROVED with conditions

Town of Amherst Abutter List

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>CityStZip</i>
19D-110	19 GLENDALE RD	LE, NGHIA HUU & HANG LE THI		19 GLENDALE RD	AMHERST, MA 01002
19D-111	27 GLENDALE RD	MACDONALD, CYNTHIA A & ABARR, LORENA L		27 GLENDALE R	AMHERST, MA 01002
20C-87	POMEROY LN	BIAS, JAMES & PEREZ,CARROLL, TR	ZINSMEISTER, GEORGE TRUSTEE	17 POMEROY LN	AMHERST, MA 01002
20C-59	7 POMEROY LN	SLOBODY DEVELOPMENT CORP		P O BOX 2023	AMHERST, MA 01004-2023
20C-88	17 POMEROY LN	BROWN, KENNETH & ET AL		17 POMEROY LN	AMHERST, MA 01002
19D-287	WEST POMEROY LN	SLOBODY DEVELOPMENT CORP		P O BOX 2023	AMHERST, MA 01004-2023
19D-11	30 WEST POMEROY LN	TURCOTTE, MATTHEW J & BARR, SARAH C		30 WEST POMEROY LN	Amherst, MA 01002
19D-6	38 WEST POMEROY LN	RUDD, MICHAEL S & GENELLE G TAYLOR		38 WEST POMEROY LN	AMHERST, MA 01002
20C-9	460 WEST ST	SHANKARA SHAKTI, INC		94-96 MAPLE ST	FLORENCE, MA 01062
20C-10	468 WEST ST	REALTY INCOME CORPORATION	C/O HESS CORP	P.O. BOX 696419	SAN ANTONIO, TX 78269-9419
19D-286	479 WEST ST	SLOBODY DEVELOPMENT CORP		P O BOX 2023	AMHERST, MA 01004-2023
19D-19	481-485 WEST ST	WANG, CHIH CHUN & YU MEI		90 HALCYON DR	BRISTOL, CT 06010
19D-5	495 WEST ST	PREMO, DAVID A & CLAIRE A		255 SYLVESTER RD	FLORENCE, MA 01062
20C-8-37	500 WEST ST #8	ARTUR, SAMIRA C		500 WEST ST 8	Amherst, MA 01002

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/Zip</i>
20C-13-37	500 WEST ST #13	BARALE, MICHELE A		500 WEST ST #13	AMHERST, MA 01002
20C-1-37	500 WEST ST #1	BRAXTON, BRANDON E & DAEL, ANNA RIMA B		500 WEST ST #1	AMHERST, MA 01002
20C-11-37	500 WEST ST #11	GILLEN DEVELOPMENT CORP		409 MAIN ST	AMHERST, MA 01002
20C-20-37	500 WEST ST #20	GORDON, GLEN & NELLY H		242 WEST ST	Amherst, MA 01002
20C-15-37	500 WEST ST #15	GREENBLATT, JANET M		500 WEST ST UNIT 15	AMHERST, MA 01002
20C-19-37	500 WEST ST #19	HANKE, GENEVRA A		500 WEST ST UNIT 19	AMHERST, MA 01002
20C-4-37	500 WEST ST #4	MOSHIRI, CYRUS ALI		7 SWALLOW FARMS RD	Amherst, MA 01002
20C-6-37	500 WEST ST #6	NACHBAR, RANDA R & ET AL		120 PULPIT HILL RD #4	Amherst, MA 01002
20C-17-37	500 WEST ST #17	NAKAJIMA, ERIC T		500 WEST ST #17	AMHERST, MA 01002
20C-12-37	500 WEST ST #12	NYDON, JUDITH		500 WEST #12	AMHERST, MA 01002
20C-2-37	500 WEST ST #2	PAVLOS, STEPHAN & MARY ANN		5405 ROYAL MILE BLVD	SALISBURY, MD 21801-2322
20C-9-37	500 WEST ST #9	PHILLIPS, SUSAN L		500 WEST ST #9	AMHERST, MA 01002
20C-14-37	500 WEST ST #14	PORET, BARRY		500 WEST ST #14	AMHERST, MA 01002
20C-10-37	500 WEST ST #10	REEJHSINGHANI, SANJIV N		9 PINEWOODS HILLS	LONGMEADOW, MA 01106
20C-16-37	500 WEST ST #16	ST JOHN, AARON B		30 WHIPPLETREE LN	AMHERST, MA 01002-3100

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>CityStZip</i>
20C-7-37	500 WEST ST #7	TIMMIERMANN, SUZANNE M		500 WEST ST #7	AMHERST, MA 01002
20C-3-37	500 WEST ST #3	TROMBLAY, NANCY J		500 WEST ST 3	Amherst, MA 01002
20C-18-37	500 WEST ST #18	WAGNER, DAVID R & CRANE, ANNETTE M		732 33RD AVE	SEATTLE, WA 98122
20C-5-37	500 WEST ST #5	ZARCHIN, SUSAN E		500 WEST ST UNIT 5	AMHERST, MA 01002
19D-9	505 WEST ST	PRATT, LEONARD H		137 PACKARDVILLE RD	PELHAM, MA 01002
19D-109	525 WEST ST	CHEN, YILI & HUO, LISU		525 WEST ST	Amherst, MA 01002